IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal No. 519/06, 521/06; 523/06;524/06; 525/06; 529/06; 530/06; 531/06; 532/06; 533/06; 534/06; 537/06; 542/06; 546/06; 547/06; 548/06; 549/06; 550/06; 551/26; 552/06; 554/06; 555/06; 556/06; 564/06; 585/06; 586/06; 587/06; 588/06; 589/06; 590/06; and 687/06.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

Shri M.V. Samarth, Advocate for the appellant in all appeals.
Shri T.A. Mirza, A.G.P. for respondent no.1 in all appeals.
Shri M.M. Agnihotri, Advocate for respondent no.2 in all appeals.

CORAM : A.P. Lavande,J
DATE : 22.12. 2006

P.C.

The appellants have filed the above appeals challenging the Judgment and Order dated 10th April, 2006 passed by the Second Ad hoc Additional District Judge, Bhandara disposing of several land acquisition cases. When the appeals came up for admission, Mr. Mirza, the learned A. G. P. on behalf of the respondent no.1 and Mr. Agnihotri, learned counsel appearing on behalf of the respondent no. 2 submitted that these appeals are not maintainable under section 54 of the Land Acquisition Act (hereinafter referred to as “the Act”) and sought dismissal of the appeals in limine.

2. The facts leading to filing of the above appeals are as follows:

Pursuant to the notification dated 12.4.1981 issued by the Government of Maharashtra large tracts of land were acquired for the Maharashtra Industrial Development Corporation (hereinafter referred to as “the Corporation”) for construction of Ashok Layland Factory at Gadegaon. Consequently, the notification under section 32(2) of the Maharashtra Industrial Development Act, 1961 and final notification under section 32(1) were published in the Government Gazette. The lands of the present appellants were included in the said notification. Thereafter, the possession of the lands of various persons including the applicants was taken. The Land Acquisition Officer made an award dated 4.5.1989. The Land Acquisition Officer did not grant statutory interest under Sections 28 and 34 of the Act to the appellants. The appellants sought references claiming interest on the amount of compensation. All the References were contested by respondent no.2. The respondent no.2 contended that the redetermination of compensation under section 28A of the Act which was introduced in the year 1984 was not applicable in case of acquisition for the Corporation and further that there was no provision under the Maharashtra Industrial Development Act, 1961 for re-determination of the compensation. The Respondent no.2 further alleged that the references preferred by the petitioners were barred by limitation. On the basis of respective contentions, the Reference Court framed following issues.

1) Does the non applicant no.2 prove that present reference is not tenable ?

2) Does the non-applicant no.2 further prove that decision of the Collector is final and can not be challenged under section 34(2) Of M.I. D. Act?

3) Whether the reference filed by the applicant is within limitation ?

4) Whether the applicant proves that he is entitled to the interest as prayed for?

5) What order and relief?

3. The Reference Court answered all the issues in negative thereby holding that the reference was tenable but the reference filed by each applicant was barred by limitation. The appellants aggrieved by the impugned Judgment and order passed in different land acquisition cases have filed the present appeals.

4. Mr. Mirza, the learned A.G. P. appearing on behalf of respondent no.1 submitted that since the reference have been rejected on the ground of limitation, the present appeals are not maintainable since the Judgment and order passed by the Reference Court cannot be termed as award, the appeals under section 54 of the Act are not maintainable. In support of his submission, the learned counsel relied upon the Judgment of Division Bench of this Court in the case of Mangilal Jawanmal and others vs. The Spl. Land

Acquisition Officer (I),Thana (AIR 1978 Bombay 325) and in Mahadeo Krishna Parkar vs. Mamalatdar of Alibag (AIR 1944 Bombay 200). Mr. Mirza also placed reliance upon order passed by this court on 28.7.2006 in First Appeal No. 204/06 in which it has been held that if the reference is dismissed on the ground of limitation no appeal lies against the said Judgment and order. Placing reliance upon the Judgment passed by the learned Single Judge in Kawadu Madhav Bansod vs. State of Maharashtra (2004(1) Mah. L.J. 980 Mr. Mirza submitted that this court has held that against the Judgment and order holding the Reference as time barred only revision is maintainable.

5. Mr. Agnihotri, learned counsel for the respondent no.2 in all appeals adopted the arguments of Mr. Mirza and further submitted that Section 34 of the Maharashtra Industrial Corporation Act, 1961 provides limitation of sixty days from the date of decision of the Collector for making reference. Therefore, he submitted that the finding of the Reference Court that the References were barred by limitation cannot be faulted.

6. Per contra, Mr. Samarth, the learned counsel appearing for the appellant submitted that the appeals are maintainable since the impugned Judgment and order passed dismissing the references as time barred is award under section 26 of the Act and, therefore, appeals under section 54 of the Act are maintainable. He further submitted that a person who seeks reference, if aggrieved, by the order of Reference Court has a vested right to file an appeal against

the award passed by the Reference Court. He further submitted that if the reference is rejected even on the ground of limitation the Judgment and order passed by the Reference Court amounts to an award under section 26 of the Act against which appeal is maintainable. He further urged that the Judgments relied upon by Mr. Mirza are not applicable. In support of his submissions the learned counsel relied upon the following authorities.

1) Khazan Singh (dead) by Legal Representatives vs. Union of India.
(AIR 2002 S.C., 726)

2) Thambi .vs. Mathew and another
(AIR 1988 Kerla 48)

3) Shyam Sundar Sarma vs. Pannallal Jaiswal and others
2005(1) SCC 436.

Lastly, Mr. Samarth submitted that in case the appeals are held not maintainable, the appellants be permitted to withdraw the appeals with liberty to file Writ Petitions/ revisions against the impugned Judgment and order.

7. I have considered the submissions made by the learned counsel. I have perused the records and the Judgments relied upon by the learned counsel for the parties.

8. In the impugned Judgment passed by the Reference court the Reference Court has held that the reference sought by each applicant was maintainable. However, the references were not filed within the period of limitation prescribed under section 18 (2)(a) of the Act. Therefore, the issue which arises for consideration is whether the Reference Court having dismissed the reference as time barred, the appeals filed by the appellants against the impugned Judgment and order are maintainable.;

9. Section 54 of the Land Acquisition Act provides for an appeal to the High Court from the award or from any part of the award passed by the reference court. Although the term “award” has not been defined under the Act, Section 26(1) of the Act provides what an award should provide for. The issue, therefore, is whether the Judgment and order passed by the reference court dismissing the references filed by each applicant as time barred would amount to an award. In my opinion, the issue is no more res integra. In Mangilal Jawanmal's case (supra) the Division Bench of this Court has held that the appeal under section 54 of the Act is maintainable only against an award as contemplated under section 26 of the Act and further that in case the reference is dismissed as time barred remedy by way of section 54 of the Act is not available since dismissal of reference on the ground of limitation would not be an award under section 26 of the Act against which an appeal under section 54 of the Act is maintainable. In Mahadeo Krishana Parkar vs. Mamlatdar of Alibag (AIR (31)1944Bombay 200 the Division Bench of this Court has held that the Collector acting under section 18 of the Act is not a

Court and the Collector has power to make a reference on certain specified conditions. The Division Bench has further held that the Reference Court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions so as to to give the court jurisdiction to hear the reference and it is not a question of the court sitting in appeal or revision on the decision of the Collector but it is a question of the court satisfying itself that the reference made under the Act is one which it is required to hear. It has been further held that if the reference does not comply with the terms of the Act then the court cannot entertain it and it is the duty of the court to see that statutory conditions have been complied with. This Judgment has been approved by the apex Court in Mohammed Hasnuddin vs. State of Maharashtra (1979)2 Supreme Court Cases, 572. It would be appropriate to quote paragraphs 23 to 28 in Mohammed Hasnuddin's case (supra). They are as follows;

> 23. ”The conditions laid down in Section 18 are matters of substance and their observance is a condition precedent to the Collector's power of reference, as rightly observed by Chandavarkar, J., in re Land Acquisition Act (supra) We are inclined to the view that the fulfillment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, sub section (2) is a sine qua non

for a valid reference by the Collector.”

24.”From these considerations, it follows that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In view of these principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in Abdul Karim's case (supra)”.

25. ”Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and, where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function,it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of hat matter have in fact arisen. As observed by the Privy Council in Nusserwanjee

Pestorjee v. Meer Mynoodeen Khan whereever jurisdiction is given to a court by an Act of parliament and such jurisdiction is only given upon certain specified terms contained in that Act; it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not rise."

26. "If an application is made which is not within time, the collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the collector will have to decide whether the application presented by the claimant is or is not within time, and satisfies the conditions laid down in Section 18. Even if a reference is wrongly made by the collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under Section 18, and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in Section 18 have been complied with and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the

question whether it has jurisdiction to entertain the reference."

27."In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector to the Court, the court is certainly not acting as a Court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-section (2) of Section 18 of the Act, and if it finds that it was so made, decline to answer reference."

28." Beaumont, C.J., delivering the judgment of the Division Bench in Mahadeo Krishna v. Mamaltdar of Alibeg, agreed with the view of Chandavarkar, J., and observed:

It seems to me that the Court is bound to satisfy itself that the reference made by the Collector complies with the special conditions, so as to give the Court jurisdiction to hear the reference. It is not a question of the Court sitting in appeal or revision on the

> decision of the Collector; it is a question of the court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act, then the Court cannot entertain it. I have myself some difficulty in seeing on what principle the Court is to be debarred from satisfying itself that the reference, which it is called upon to hear, is a valid reference. I am in entire agreement with the view expressed by Chandavarkar, J that it is the duty of the Court to see that the statutory conditions have been complied with."

10. From a bare perusal of the above paragraphs in Mohammed Husnuddin's case, it is clear that the apex court has held that the reference court can decide the reference on merits only after satisfying itself that the reference made by the Collector is within the period prescribed under Section 18(2) of the Act and in case the reference is time barred the Reference Court will have no jurisdiction to decide the reference on merits. In other words, the Reference Court gets jurisdiction to decide the reference on merits only if it is satisfied that the reference is made within the period stipulated under section 18(2) of the Act. In this respect, jurisdiction of the Reference Court differs from that of civil court trying a suit which has jurisdiction to decide the issue of limitation along with other issues, if the issue of limitation is a mixed question of law and fact.

11. In view of the clear pronouncement of the above Judgments

of this Court as well as the Apex Court it is clear that the Reference Court has to first decide if the reference is within limitation and only if the Reference Court comes to the conclusion that the reference is within limitation then only it can decide the reference on merits. In case the reference court gives a finding on merits after holding that the reference is time barred, the finding on merits would be a finding without jurisdiction and non est.

12. In view of the clear ratio laid down by the Division Bench of this court in Mangilal Jawanmal's case (supra) the only conclusion which can be drawn is that if the reference is rejected by the Civil Court on the ground that it is time barred the Judgment would not amount to an award as contemplated under section 26 of the Act and, therefore, appeal under section 54 would not be maintainable.

13. I shall now consider the authorities relied upon by Mr. Samarth on behalf of the appellants. In Jaykisan Malpanis' case (supra) the issue before the Division Bench was whether an appeal against the Judgment passed by the reference court would be continuation of proceedings commenced by reference to the civil court. The issue involved in the present appeals was not before the Division Bench and, therefore, the ratio laid down in Jaikisan's case (supra) is clearly not attracted in the present appeals. In Khajansingh's case (supra) the Apex Court held that the reference made under section 18 of the Land Acquisition Act cannot be dismissed in default for non appearance of the applicant and the reference court has to pass an award in answer to the reference

made by the Collector. I fail to understand as to how the ratio in Khajansingh's case is attracted in the present appeals. In Thambi' case (supra) the Full Bench of Kerla High Court held that a decree dismissing an appeal in limine may not be binding on the respondent for the reason that he had no notice of the appeal and it may be open to him to ignore the decree. But that does not mean that an appellate decree dismissing an appeal has no legal effect. The legal effect is the confirmation of the decree appealed against whether the dismissal is after hearing the respondent or without notice to him. The ratio on Thambis' case is clearly not attracted since the facts are clearly distinguishable. In Sham Sundar Sarma's case (supa) the Apex Court held that the appeal when dismissed on refusal to condone delay is nevertheless a decision in the appeal and merely because there is no merger of the decree of the trial court in that of the appellate court in a case of this nature it does not imply that explanation to the order 9 rule 13 of C.P. C. would not be applicable. I again fail to understand as to how the ratio in this case is attracted in the present appeals.

14. Thus, I find that the authorities relied upon by Mr. Samarth in support of his submissions do not support the appellants. On the contrary, the ratio laid down in Mangilal Jawanmal's case (supra) is squarely applicable in the present appeals. I, therefore, hold that the present appeals are not maintainable inasmuch as the Judgment and order passed by the reference court disposing of various reference sought by the appellants cannot be termed as award appellable under section 54 of the Act.

15. As stated above Mr. Samarth has sought leave to withdraw the appeals with liberty to file revisions/ writ petitions against the impugned Judgment and order in the event the appeals are held not maintainable. Since I have held that the appeals are not maintainable, it would be in the interest of justice to permit the appellants to withdraw the above appeals with liberty to file appropriate proceedings against the impugned Judgment and order.

16. In the result, therefore, the appeals are held to be not maintainable. However, the appellants are permitted to withdraw the appeals with liberty to file appropriate proceedings against the impugned Judgment and order. The Registrar (J) to refund the appropriate court fees to the appellants permissible under the Rules. No order as to costs.

Judge

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